

# BOND SCHOENECK & KING

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January 24, 2024

**VIA ECF**

The Honorable Kenneth M. Karas  
United States District Judge  
Southern District of New York  
300 Quarropas Street, Chambers 533  
White Plains, NY 10601-4150

Re: **Pedro Johnson v. Rockland County BOCES, et al.**  
**Case No. 21-CV-03375 (KMK)**

Your Honor:

This firm represents Rockland County BOCES (“Rockland BOCES”) and its individual defendant employees Daniel Wilson (“Wilson”) and Mary Jean Marsico (“Marsico”) (collectively “Defendants”). Pursuant to Your Honor’s January 23, 2024 Order, Defendants submit this reply to Plaintiff’s January 22, 2024 response to Defendants’ application regarding discovery. In her January 22, 2024 letter, Plaintiff’s counsel fails to advise this Court that she served the outstanding discovery items on the very same day she advised this Court that she “provided” them and only 2 hours before she filed that letter with the Court. All facets of the discovery process have been unduly delayed here and through no fault of Defendants. Plaintiff has consistently failed to comply with the Case Management Order and has ignored the discovery deadlines set by the Court to date. Plaintiff is not compelled to abide by Court mandated deadlines nor timely respond to discovery demands until ordered by this Court to do so. The discovery deadlines were extended initially to allow for Plaintiff’s untimely discovery responses and rescheduling of Plaintiff’s deposition. Accordingly, on December 12, 2023 Defendants re-noticed Plaintiff’s deposition for January 12, 2024 (within the Court’s 1/22/24 ordered deadline), allowing 30 days for Plaintiff to comply and/or reschedule a new date. Within those 30 days, no action was taken by Plaintiff’s counsel to reschedule or even respond to Defendants’ emails and phone calls demanding same. Plaintiff has expended enough of this Court’s resources and Defendants’ time and expense. It should not require application to the Court each time Plaintiff ignores a deadline or communication from counsel for Plaintiff to comply with discovery and Court ordered deadlines.

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To date, Defendants have incurred costs and expenses due to Plaintiff's dilatory and contumacious tactics which have repeatedly occurred and warrant sanction. Accordingly, Defendants renew their request for permission to move to dismiss this action and/or for preclusion for Plaintiff's failure to comply with the Court's previous orders and for fees and costs in the preparation and transcript of Plaintiff's deposition on January 12, 2024. See Rubio v. Tillman, 1993 WL 541246 (S.D.N.Y. 1993), Peters-Turnbull v. Board of Educ. of City of New York, 1999 WL 959375 (S.D.N.Y. 1999).

Should the Court deny such request, Defendants respectfully request an extension of time to take Plaintiff's deposition to February 27, 2024 and that costs and fees be awarded for the taking and transcript of same. The reason this time is requested is that over the course of the next few weeks I am engaged in several prescheduled multi-day depositions of several witnesses and will not be available for several weeks.

Respectfully submitted,

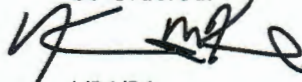
*Barbara Marissa Maisto*

Barbara Marissa Maisto

cc: Antoinette Williams, Esq.

Plaintiff's deposition must be taken by 2/27/24. Failure by Plaintiff to meet this deadline may result in sanctions. In the meantime, Defendants may also move fees and costs related to the delays of the deposition to date.

So Ordered.



1/24/24